

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Section 73.202(b))	MB Docket No. 07-221
Table of Allotments,)	RM-11402
FM Broadcast Stations.)	
(Susanville, California))	
)	
)	

NOTICE OF PROPOSED RULE MAKING

Adopted: October 17, 2007

Released: October 19, 2007

Comment Date: December 10, 2007

Reply Comment Date: December 26, 2007

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a Petition for Rule Making (the "Petition") filed by Hilltop Church ("Petitioner"), the licensee of noncommercial educational ("NCE") Station KHGQ(FM) ("KHGQ"), operating on Channel 262A, Quincy, California. Petitioner has filed an application to modify the allotment of Station KHGQ from Channel 265A to its original Channel 262A allotment.¹ To accommodate the foregoing application, the Petition requests that Channel 264A be substituted for vacant Channel 262A at Susanville, California.

2. In *Susanville, California*,² the Commission allotted Channel 262A at Susanville, California. To accommodate the Susanville allotment, the Commission substituted Channel 265A for Channel 262A at Quincy, California, and modified the KHGQ license accordingly. Station KHGQ is presently operating on Channel 262A. The Susanville allotment has not yet been set for auction. The Report and Order in *Susanville, California, supra*, stated that the eventual Susanville permittee would be required to reimburse Station KHGQ for expenses incurred in changing that station's channel to accommodate the Susanville allotment. Petitioner is a non-profit organization which holds an NCE broadcast license for Station KHGQ. As such, the station has limited resources. If and when Channel 262A at Susanville is auctioned off and a permittee is prepared to commence operations on Channel 262A, Petitioner would need to incur the expenses associated with the required channel change at Quincy and then seek reimbursement from the permittee. Allowing Petitioner to remain on Channel 262A and substituting Channel 264A for the vacant Channel 262A allotment at Susanville would eliminate the channel substitution at Quincy and would allow for continuity of service by Station KHGQ on Channel 262A at Quincy.

3. We believe Petitioner's proposal warrants consideration because it would provide a suitable rearrangement of channels for Susanville, California, that would accommodate the requested rearrangement of channels for Quincy, California, and thus serve the public interest pursuant to Priority

¹ File No. BPED-20070619AAJ. Action on this application will be taken separately.

² Report and Order, 19 FCC Rcd 22022 (MB 2004).

(4) of the FM allotment priorities³ by providing continuity of service on Channel 262A at Quincy, California, as well as saving time and money for both the Petitioner and the eventual permittee of Channel 264A at Susanville. A staff engineering analysis indicates that Channel 264A can be allotted to Susanville, consistent with the technical engineering requirement of the Commission's Rules, at the reference coordinates for the current vacant Channel 262A at Susanville.⁴

4 Accordingly, we seek comment on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules,⁵ as follows:

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Susanville, California	262A	264A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required to allot this channel.

6. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules,⁶ interested parties may file comments on or before December 10, 2007 and reply comments on or before December 26, 2007, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW, TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on Petitioner's counsel, as follows:

John S. Neely, Esq.
Miller and Neely, P.C.
6900 Wisconsin Avenue
Suite 704
Bethesda, Maryland 20815

7. Parties must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. **All filings must be addressed to Marlene H. Dortch, Secretary, Federal Communications Commission, Office of the Secretary. Any filing that is not addressed to the Office of the Secretary will be treated as filed on the day it is received in the Office of the Secretary. See 47 C.F.R. Section 1.7. Accordingly, failure to follow the specified requirements may result in the treatment of a filing as untimely.**

³ The FM allotment priorities are: (1) First full-time aural service; (2) Second full-time aural service; (3) First local service; and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3). *See Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88 (1982), *recon. denied*, Memorandum Opinion and Order, 56 RR 2d 448 (1983).

⁴ The coordinates for Channel 264A at Susanville are: 40-24-59 NL and 120-39-07 WL.

⁵ 47 C.F.R. § 73.202(b).

⁶ 47 C.F.R. §§ 1.415 and 1.419.

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b).⁷ This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden “for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* Section 3506(c)(4).⁸

9. For further information concerning the proceeding listed above, contact R. Barthen Gorman, Media Bureau (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision in the applicable docket is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in a particular docket unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
Audio Division
Media Bureau

Attachment: Appendix

⁷ See *Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549 (Feb. 9, 1981).

⁸ 44 U.S.C. § 3506(c)(4).

APPENDIX

1. Pursuant to authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b), and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS PROPOSED TO AMEND the FM Table of Allotments, 47 C.F.R. Section 73.202(b), as set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding:

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments (*see* 47 C.F.R. Section 1.420(d).)

(b) Petitions for rule making which conflict with the proposals in this *Notice* will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; service. Pursuant to applicable procedures set out in 47 C.F.R. Sections 1.415 and 1.420, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. The person filing the comments shall serve comments on the petitioners. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. A certificate of service shall accompany such comments and reply comments (*see* 47 C.F.R. Section 1.420(a), (b) and (c).) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of 47 C.F.R. Section 1.420, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center, at its headquarters, 445 12th Street, S.W., Washington, D.C.